

MINUTES OF THE OPEN SESSION

OF THE RHODE ISLAND ETHICS COMMISSION

October 19, 2010

The Rhode Island Ethics Commission held its 18th meeting of 2010 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, October 19, 2010, pursuant to the notice published at the Commission Headquarters, the State House Library, and electronically with the Rhode Island Secretary of State.

The following Commissioners were present:

Barbara R. Binder, Chair Deborah M. Cerullo SSND*

Ross Cheit, Vice Chair Edward A. Magro

J. William W. Harsch, Secretary Mark B. Heffner*

James V. Murray John D. Lynch, Jr.**

Frederick K. Butler

Also present were Edmund L. Alves, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Jason Gramitt and Dianne L. Leyden; and Commission Investigators Steven T. Cross, Peter J. Mancini and Gary V. Petrarca.

At 9:03 a.m., the Chair opened the meeting. The first order of business was a motion to approve minutes of the Open Session held on September 28, 2010. Chair Binder noted a correction on page 4, which should read “concerning.” Upon motion made by Commissioner Magro and duly seconded by Commissioner Murray, it was unanimously

VOTED: To approve minutes of the Open Session held on September 28, 2010, as corrected.

***Commissioners Cerullo and Heffner arrived at 9:05 a.m.**

The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of Robert DiCarlo, a West Warwick Police Officer. Staff Attorney Gramitt presented the Commission Staff recommendation. The Petitioner was present.

****Commissioner Lynch arrived at 9:08 a.m.**

In response to Commissioner Cheit, the Petitioner provided a form that gold buying businesses must submit to their local police department and the RI Attorney General’s Office for reporting purposes. Commissioner Cheit inquired as to the Petitioner’s access

to the police database. The Petitioner indicated that the information which he would have to report would be entered into the database. He clarified that the public does not have access to the database. In response to Commissioner Lynch, the Petitioner confirmed that the database reflects the price that everyone else is paying for gold, and he represented that the price has to be publicly posted and the item must be weighed in the seller's presence. Commissioner Lynch noted that he had prior experience with the Petitioner in a precious metals case.

Commissioner Cheit inquired as to how the Petitioner would get clients. The Petitioner stated that he would have to get a commercial building for his business and advertise. Commissioner Cheit expressed concern that the Petitioner would get referrals that he would not otherwise obtain due to his position. The Petitioner represented that police departments do not refer individuals to gold buying businesses. In response to Commissioner Heffner, the Petitioner informed that he would be eligible to retire in August, but he presently works full-time, four days on and two days off. He stated that he would have to rent a commercial building because the gold buying business would be a part-time enterprise. Commissioner Heffner wondered how the Petitioner could do so, being a full-time police officer and starting a business from scratch without a referral base. He echoed Commissioner Cheit's concerns. Commissioner Heffner stated that he does not doubt the Petitioner's integrity, but he would have less concern if the Petitioner were doing this post

retirement.

Chair Binder expressed that she is trying to understand the concerns about the referral base but does not see how the police department would be involved. Commissioner Lynch noted that pawn shops lose money during the course of investigations. Commissioner Harsch stated that this is more of an appearance issue, with the Petitioner being involved in that area professionally and having a business in it as well. Commissioner Butler commented that he would have more concern if the police department referred individuals to particular gold buyers. Commissioner Cerullo inquired as to whether the police department's authority to confiscate stolen property is discretionary. The Petitioner explained that if a victim identifies property as their own the police will seize it. Seized items are placed in the evidence room pending the case going forward. Upon motion made by Commissioner Murray and duly seconded by Commissioner Butler, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Robert DiCarlo, a West Warwick Police Officer.

The next advisory opinion was that of Christopher Duhamel, a member of the State Board of Registration for Professional Engineers. Staff Attorney Gramitt presented the Commission Staff recommendation. The Petitioner was present. Staff Attorney Gramitt noted a correction on page 2 of the draft, in which the date should

read “1990.” The Petitioner stated that he does not believe that he is personally affected either way because he has both licenses. In response to Commissioner Harsch, he indicated that the firm he works at does both land surveying and professional engineering. He further stated that he is the only one on staff who holds both licenses, although there are both surveyors and engineers on staff. The Petitioner informed that it had been a part of the civil engineering curriculum to also do land surveying but that aspect has started to be weeded out. Chair Binder inquired if the analysis would change if the Petitioner only held one license instead of both. Staff Attorney Gramitt replied that it would not.

In response to Commissioner Butler, the Petitioner stated that there are no other land surveyors on his board. He indicated that the Land Surveyors Registration Board is comprised mostly of surveyors but there is one member who holds both licenses. He represented that his board relies upon its experience, its counsel, and state law with respect to determining what tasks may be performed by an engineer. Upon motion made by Commissioner Magro and duly seconded by Commissioner Butler, it was unanimously

VOTED: To issue an advisory opinion, as amended and attached hereto, to Christopher Duhamel, a member of the State Board of Registration for Professional Engineers.

At 9:28 a.m., upon motion made by Commissioner Magro and duly

seconded by Commissioner Lynch, it was unanimously

VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4), to wit:

a.) Motion to approve minutes of Executive Session held on September 28, 2010.

**b.) In re: Charles D. Moreau,
Complaint No. 2010-2**

**c.) In re: Joseph S. Larisa, Jr.,
Complaint No. 2010-12**

d.) Motion to return to Open Session.

At 11:15 a.m., the Commission returned to Open Session, at which time Commissioners Butler and Heffner left the meeting.

The next order of business was a motion to seal the minutes of the Executive Session held on October 19, 2010. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Lynch, it was unanimously

VOTED: To seal minutes of the Executive Session held on October 19, 2010.

Chair Binder reported that the Commission took the following actions in Executive Session: 1) approved minutes of the Executive Session held on October 19, 2010; 2) found that probable cause exists in Complaint No. 2010-2, In re: Charles D. Moreau; and 3) adopted the Prosecution's submission, as set forth in its Initial Determination Report, in Complaint No. 2010-12, In re: Joseph S. Larisa, Jr. All votes taken in Executive Session were unanimous.

The next order of business was discussion of Probable Cause. Chair Binder indicated that the Commission had hoped to discuss the probable cause issue today but would continue its discussion to the next meeting, given that the Commission is presently understaffed and additional complaints are being filed.

The next order of business was discussion of Participation in Union Actions by Public Officials who are Union Members. Senior Staff Attorney D'Arezzo distributed binders containing the substantial background materials to inform the Commission's further discussion.

Chair Binder suggested that this matter be placed on the agenda for the meeting after the Commission's consideration of probable cause.

The next order of business was the Director's Report. Executive Director Willever reported that there are eighteen complaints, two advisory opinions and one litigation matter pending. He indicated

that he is aware of approximately ten other potential complaints that may be filed. He stated that four formal APRA requests have been granted since the last meeting. Director Willever informed that Amy Stewart will begin her employ as the new Staff Attorney I on October 25th. He advised that he had scheduled a financial disclosure overview to be presented by Chief Investigator Cross but he would recommend continuing it to the next meeting due to time constraints.

The next order of business was New Business. Commissioner Harsch voiced his concern that the Commission previously noticed its discussion of both probable cause and participation in union actions by public official who are union members and that these matters continue from meeting to meeting. Chair Binder stated that the Staff is doing its best to bring these issues forward given the existing vacancy and present caseload. Commissioner Harsch requested that the Commission set a date certain for their consideration and indicated that he would like the probable cause issue addressed at the next meeting. Chair Binder indicated that the Staff will make every effort to do so. Commissioner Murray expressed his sense that the Staff is over tasked with research. He suggested that the consideration not be at the next meeting, particularly with a new staff member coming on board. Senior Staff Attorney D'Arezzo stated that the Staff will do its best to present the probable cause issue at the next meeting.

Commissioner Cheit commented that the Commission is aware from

news reports that a submitted complaint was rejected at the Executive Director's level. In response to Commissioner Cheit, Beverly Clay, a representative of Operation Clean Government (OCG), clarified that the individual who reportedly submitted the complaint, Sara Quinn, has not had any affiliation with OCG for several years. Commissioner Cheit noted that he is interested in the words "financial or otherwise" with respect to section 5(a)'s prohibition. He stated that he would be interested to see if any state has tried to limit cronyism through a regulation that would prohibit actions, such as hiring, where the impact is other than financial.

At approximately 11:29 a.m., upon motion made by Commissioner Murray and duly seconded by Commissioner Magro, it was unanimously

VOTED: To adjourn.

Respectfully submitted,

J. William W. Harsch

Secretary